

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
IN NASHVILLE**

TENNESSEE WALKING HORSE)	
BREEDERS' AND EXHIBITORS')	
ASSOCIATION,)	
)	CASE NO. 1:05cv00088
Plaintiff,)	
)	JUDGE CAMPBELL
v.)	MAGISTRATE JUDGE KNOWLES
)	
NATIONAL WALKING HORSE)	
ASSOCIATION,)	
)	
Defendant.)	

ANSWER TO COMPLAINT

COMES NOW, the National Walking Horse Association ("NWHHA") and responds as follows to Plaintiff's Complaint:

NWHHA acknowledges that Plaintiff brings this action against NWHHA for: Copyright Infringement violations of 17 U.S.C. §§ 101 *et seq.*; Trademark Infringement in violation of 15 U.S.C. § 1114(1); Unfair Competition in violation of 15 U.S.C. § 1125(a); Trademark Dilution in violation of 15 U.S.C. § 1125(c); Unfair Competition in violation of Tenn. Code Ann. § 47-18-104; Common Law Unfair Competition; and Intentional Interference with Business Relations; but expressly denies that NWHHA committed any violations of the before mentioned statutes and or common law claims.

By way of answer to the numbered averments contained in the Complaint, NWHHA shows as follows:

I. PARTIES

1. Admitted.

2. NWHHA does not have sufficient information to admit or deny the allegations of Paragraph 2, and are admitted unless discovery reveals otherwise.

3. Admitted.

4. NWHHA has its principal place of business at 11362 East Highway Eighty-Two, Whitesboro, Texas 76273, therefore Paragraph 4 is denied.

II. VENUE AND JURISDICTION

5. Admitted.

6. Admitted.

7. NWHHA admits that specific jurisdiction in Tennessee is proper. NWHHA does not have sufficient knowledge to admit as to whether Plaintiff's claims were a result of any actions by NWHHA and, therefore, denies the same.

8. NWHHA denies each and every allegation of Paragraph 8.

9. Admitted.

10. NWHHA admits that venue is proper in this district. NWHHA denies that a substantial part of the intellectual and or tangible property that may be subject to this action is situated in this District.

III. FACTS

A. TWHBEA AND THE TWHBEA REGISTRY

11 NWHHA does not have sufficient knowledge to admit or deny as to whether the Plaintiff is the oldest organization in the world devoted to the breed of the walking horse, or Plaintiff's proposed breed of Tennessee Walking Horse, and, therefore, denies the same. Whether

Plaintiff is the most prestigious organization in the world devoted to the breed of walking horses, or Plaintiff's proposed breed of Tennessee Walking Horse, is Plaintiff's opinion, and thus denied.

12. NWAH is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 12 of the Complaint and, therefore, denies the same.

13. NWAH is without knowledge or information sufficient to form a belief as to whether the Tennessee Walking Horse National Celebration is the oldest event for the walking horse, or plaintiff's proposed breed of Tennessee Walking Horse, and, therefore, denies the same. Additionally, whether the Tennessee Walking Horse National Celebration is the most prestigious show event for the walking horse, or plaintiff's proposed breed of Tennessee Waking Horse, is Plaintiff's opinion, and therefore, NWAH denies the same.

14. NWAH admits that the Plaintiff, at some point in time, created a registry of walking horses. NWAH is without knowledge or information sufficient to form a belief as to the truth of the time in which Plaintiff's registry was created and, therefore, denies the same.

15. NWAH admits that Plaintiff has maintained, marketed and distributed a registry for walking horses; however, NWAH is without knowledge or information sufficient to establish when Plaintiff established a registry, therefore, denies the initial date of existence of the same.

16. NWAH admits that Plaintiff's registry contains factual ancestral lineage records for walking horses. NWAH is without knowledge or information sufficient to determine whether Plaintiff's registry contains over seventy years of records and whether those records are unbroken and, therefore, the remainder of the averments contained in Paragraph 16 of the Complaint are denied.

17. NWAH is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 17 of the Complaint and, therefore, denies the same.

18. Paragraph 18 is the opinion of Plaintiff, and is therefore denied.

19. NWA denies that any factual ancestral lineage information within Plaintiff's registry, or any registry created therefrom, is original to Plaintiff. Accordingly, NWA denies that the factual information used to create an ancestral lineage registry, or any registry created therefrom, is virtually impossible to independently duplicate.

20. NWA admits that certain non-factual elements of creative expression found within Plaintiff's registry, and Plaintiff's registry as an indivisible whole, may afford some protection under 17 U.S.C. §§ 101 *et seq.* NWA denies that any historical facts contained within Plaintiff's registry are subject to protection under 17 U.S.C. §§ 101 *et seq.*

21. NWA admits that the Plaintiff registered and received copyright registration certificates for the TWHBEA Registry as an indivisible whole. NWA admits that copyright registration certificates are attached to the Complaint at Exhibit A.

22. Based on the information provided by Plaintiff, NWA admits that Plaintiff applied for registration for the latest version of the TWHBEA Registry as an indivisible whole in a CD-ROM format. NWA is without knowledge or information sufficient to form a belief as to the truth of when the TWHBEA Registry was first published on CD-ROM format and, therefore, denies the same. NWA admits that a copy of this application is attached to the Complaint as Exhibit B.

23. NWA is without sufficient knowledge as to the basis from which Plaintiff currently issues registry certificates and, therefore, denies the same. NWA admits that Plaintiff issues certificates to owners of walking horses.

24. NWA denies that there is anything afforded copyright protection in Plaintiff's registry that likewise appears in Plaintiff's certificates. NWA admits that Plaintiff issues certificates which bear the factual ancestral lineage of particular walking horses. NWA is without

sufficient knowledge as to whether the factual ancestral lineage found on every issued certificate is accordingly reflected in Plaintiff's registry.

B. THE TWHBEA MARKS

25. NWAH is without knowledge or information sufficient to determine whether Plaintiff has continuously and exclusively used the words "TENNESSEE WALKING HORSE BREEDERS' AND EXHIBITORS' ASSOCIATION", in connection with the maintenance of Plaintiff's registry, as a service-mark in interstate commerce since June 1974 and, therefore, denies the same.

26. NWAH is without knowledge or information sufficient to determine whether Plaintiff has continuously and exclusively used the words "TENNESSEE WALKING HORSE BREEDERS' AND EXHIBITORS' ASSOCIATION" in connection with the promotion of walking horse sporting events and competitions, informational services, and printed materials and publications in the field of walking horses since June 1974 and, therefore, denies the same.

27. NWAH is without knowledge or information sufficient to determine whether Plaintiff has continuously and exclusively used the letters "TWHBEA", in connection with the promotion of walking horse sporting events and competitions, informational services, and printed materials and publications in the field of walking horses since May 30, 1992 and, therefore, denies the same.

28. NWAH admits that Plaintiff has used the federally registered design-only service mark (as shown in the Exhibit C drawing) to identify a walking horse registry for advertising and business purposes. NWAH is without knowledge or information to determine if Plaintiff has used its federally registered design service mark in connection with the promotion of walking horse sporting events and competitions, information services, and printed materials and publications in the field of walking horses and, therefore, denies the same.

29. NWAH is without knowledge or information sufficient to determine whether Plaintiff has continuously and exclusively used the words “TENNESSEE WALKING HORSE BREEDERS’ AND EXHIBITORS’ ASSOCIATION” as a service-mark in interstate commerce in connection with on-line information services, computerized communications services and on-line retail store services since July 1, 2002 in the field of the walking horse and, therefore, denies the same.

30. NWAH is without knowledge or information sufficient to determine whether Plaintiff has continuously and exclusively used the letters “TWHBEA”, in connection with on-line informational services, computerized communications services and on-line retail store services in the field of walking horses since July 1, 2002 and, therefore denies the same.

31. NWAH is without knowledge or information sufficient to determine whether Plaintiff used it federally registered design service mark in connection with on-line informational services, computerized communications services and on-line retail store services in the field of walking horses since July 1, 2002 and, therefore, denies the same.

32. NWAH denies that Plaintiff’s registry is the official registry for walking horses or Plaintiff’s proposed breed of Tennessee Walking Horse. NWAH admits that the United State Patent and Trademark Office registered Plaintiff’s design only service mark, as it appears in Exhibit D, on January 31, 1995, under Registration Number 1,876,853.

33. NWAH is without knowledge or information sufficient to determine whether any of Plaintiff’s registered and/or proposed service marks are considered famous and, therefore, denies the same.

34. NWAH admits that Plaintiff has developed some commercial value and goodwill in its federally registered design service mark. NWAH is without knowledge or information sufficient to determine whether Plaintiff has developed any goodwill and or commercial value in the acronym

“TWHBEA” or the words “TENNESSEE WALKING HORSE BREEDERS’ AND EXHIBITORS’ ASSOCIATION” and, therefore, denies the same.

35. NWAH admits that Plaintiff has developed commercial value in its registry.

C. NWAH

36. Admitted.

37. Admitted.

38. Admitted

39. Admitted.

40. Admitted.

41. Admitted.

42. NWAH denies NWAH was formed or founded by Don Bell (“Mr. Bell”) individually, as in fact NWAH was founded by approximately fifty individuals.

43. Admitted.

44. NWAH admits that Mr. Bell was aware of Plaintiff’s registry, Plaintiff’s federally registered design service mark and that the Plaintiff’s registry as an indivisible whole received copyright registration. NWAH denies that Mr. Bell was aware of marks used in commerce to identify Plaintiff’s goods and or services other than the federally registered design service mark. NWAH denies that Mr. Bell was aware of every existing relationship with present and prospective members of Plaintiff. NWAH admits that Mr. Bell’s knowledge is imputed to NWAH only to the extent of Mr. Bell’s admissions herein.

D. NWAH’S UNLAWFUL ACTIVITIES

45. Admitted.

46. NWAH admits that it established a registry for walking horses.

47. NWAHA admits that its registry provides factual ancestral lineage information of walking horses.

48. NWAHA admits that it issues certificates of pedigree and ownership registration for walking horses.

49. NWAHA denies that it builds its registry solely by means of using data from existing registries. NWAHA admits that it builds its registry based on the factual ancestral lineage information of walking horses.

50. NWAHA admits it has solicited and advertised that it uses the factual ancestral lineage information of walking horses to create a registry for the same. NWAHA denies that it has solicited and advertised any use of the Plaintiff's registry certificates in their entirety or any of the copyrightable elements thereof.

51. NWAHA admits that it has given persons desiring to register their walking horse with NWAHA the option to submit certificates created by Plaintiff, from which factual ancestral lineage information could be obtained. NWAHA denies that it builds upon its registry, issues certificates of pedigree, or issues ownership registrations solely from the information found within the certificates issued by Plaintiff.

52. NWAHA denies that it has reproduced, prepared derivative works from or distributed Plaintiff's registry certificates. NWAHA admits that it has used factual ancestral lineage information to create original works of authorship.

53. NWAHA denies each and every allegation of Paragraph 53.

54. NWAHA denies that it has used Plaintiff's federally registered design service mark in connection with any commercial activity, thus consent is irrelevant.

55. NWAHA denies each and every allegation of Paragraph 55.

56. NWAHA denies each and every allegation of Paragraph 56.

57. NWAHA denies the averments in Paragraph 57.

58. NWAHA denies the averments in Paragraph 58.

IV. CAUSES OF ACTION

A. COPYRIGHT INFRINGEMENT

59. NWAHA incorporates the factual allegations set forth in the preceding paragraphs as if the same were fully written herein.

60. NWAHA denies that factual ancestral lineage information of walking horses is original to Plaintiff, and as such, is not subject to copyright protection under 17 U.S.C. §§ 101 *et seq.* NWAHA is without knowledge or information sufficient to determine whether Plaintiff's current registry as an indivisible whole is original to Plaintiff and, therefore, denies that Plaintiff's registry is subject to copyright protection under 17 U.S.C. §§ 101 *et seq.*

61. NWAHA is without knowledge or information sufficient to determine whether Plaintiff, at all relevant times, has been the sole owner of all right, title and interest in and to any copyrightable expression that Plaintiff may have in its registry and, therefore, denies the same.

62. NWAHA denies each and every allegation of Paragraph 62.

63. NWAHA denies each and every allegation of Paragraph 63.

64. NWAHA denies each and every allegation of Paragraph 64.

65. Paragraphs 65 to 70 of the Complaint are prayers for relief, and as such, do not require a response. NWAHA denies that Plaintiff is entitled to any relief whatsoever.

B. TRADEMARK INFRINGEMENT IN VIOLATION OF 15 U.S.C. § 1114(1)

71. NWAHA incorporates the factual allegations set forth in the preceding Paragraphs as if the same were fully written herein.

72. NWA denies that it purposefully uses the letters “TWHBEA” to imitate the Plaintiff’s federally registered design service mark. NWA denies that the application of the letters “TWHBEA” is likely to cause confusion, or to cause mistake, or to deceive the public as to the affiliation, connection or association of NWA with Plaintiff, as to the origin of NWA’s services, or as to sponsorship or approval by Plaintiff of NWA’s goods, services or commercial activities in violation of 15 U.S.C. §1114(1).

73. NWA denies each and every allegation of Paragraph 73.

74. NWA denies each and every allegation of Paragraph 74.

75. NWA denies each and every allegation of Paragraph 75.

76. Paragraphs 76 to 78 of the Complaint are prayers for relief, and as such, do not require a response. NWA denies that Plaintiff is entitled to any relief whatsoever.

C. UNFAIR COMPETITION IN VIOLATION OF 15 U.S.C. § 1125(A)

79. NWA incorporates the factual allegations set forth in the preceding Paragraphs as if the same were fully written herein.

80. NWA denies any use of Plaintiff’s federally registered design service mark. NWA denies that the application of the letters “TWHBEA” is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of NWA with Plaintiff, as to the origin of NWA’s services, or as to sponsorship or approval by Plaintiff of NWA’s goods, services or commercial activities in violation of 15 U.S.C. §1125(a)(1).

81. NWA denies each and every allegation of Paragraph 81.

82. NWA denies each and every allegation of Paragraph 82.

83. Paragraphs 83 and 84 of the Complaint are prayers for relief, and as such, do not require a response. NWA denies that Plaintiff is entitled to any relief whatsoever.

D. COMMON LAW UNFAIR COMPETITION

85. NWAH incorporates the factual allegations set forth in the preceding Paragraphs as if the same were fully written herein.

86. NWAH denies any use of Plaintiff's federally registered design service mark. NWAH denies that the application of the letters "TWHBEA" is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of NWAH with Plaintiff, as to the origin of NWAH's services, or as to sponsorship or approval by Plaintiff of NWAH's goods, services or commercial activities.

87. NWAH denies each and every allegation of Paragraph 87.

88. NWAH denies each and every allegation of Paragraph 88.

89. Paragraphs 89 and 90 of the Complaint are prayers for relief, and as such, do not require a response. NWAH denies that Plaintiff is entitled to any relief whatsoever.

E. UNFAIR COMPETITION IN VIOLATION OF TENN. CODE ANN. § 47-18-104

91. NWAH incorporates the factual allegations set forth in the preceding Paragraphs as if the same were fully written herein.

92. NWAH denies that it has attempted to pass off its products and services as those of Plaintiffs. NWAH denies any act that has likely caused confusion as to Plaintiff's affiliation or certification of NWAH goods and/or services. NWAH denies that the application of the letters "TWHBEA" creates a false impression as to the origin of NWAH's goods and services.

93. NWAH denies each and every allegation of Paragraph 93.

94. Paragraphs 94 and 95 of the Complaint are prayers for relief, and as such, do not require a response. NWAH denies that Plaintiff is entitled to any relief whatsoever.

F. TRADEMARK DILUTION IN VIOLATION OF 15 U.S.C. § 1125(c)

96. NWAH incorporates the factual allegations set forth in the preceding Paragraphs as if the same were fully written herein.

97. NWAH is without knowledge or information sufficient to determine whether any of Plaintiff 's registered and/or proposed service marks are considered famous and, therefore, denies the same.

98. NWAH denies any use of Plaintiff's federally registered design service mark. NWAH is without knowledge or information sufficient to determine whether any of Plaintiff 's registered and/or proposed service marks are considered famous and, therefore, denies the same.

99. NWAH denies any use of Plaintiff's federally registered design service mark. NWAH admits that the acronym "TWHBEA" identified Plaintiff's registry certificates on NWAH's website, but denies that it was a use of Plaintiff's proposed service mark(s). NWAH denies any allegation of sponsorship by Plaintiff's proposed services marks.

100. NWAH denies any use of Plaintiff's federally registered design service mark. NWAH admits that the acronym "TWHBEA" identified Plaintiff's registry certificates on NWAH's website, but denies that it was a use of Plaintiff's proposed service mark(s). NWAH denies any allegation of dilution of Plaintiff's proposed services marks.

101. Paragraph 101 of the Complaint is a prayer for relief, and as such, does not require a response. NWAH denies that Plaintiff is entitled to any relief whatsoever.

G. INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONS

102. NWAH incorporates the factual allegations set forth in the preceding Paragraphs as if the same were fully written herein.

103. NWA is without knowledge or information sufficient to determine whether Plaintiff has developed certain existing relations with its members and with identifiable future members and, therefore, denies the same.

104. NWA denies any specific knowledge not otherwise admitted within the Answer.

105. NWA denies each and every allegation of Paragraph 105.

106. NWA denies each and every allegation of Paragraph 106.

107. NWA denies each and every allegation of Paragraph 107.

108. Paragraphs 108 and 109 of the Complaint are prayers for relief, and as such, do not require a response. NWA denies that Plaintiff is entitled to any relief whatsoever.

All allegations of the Complaint not admitted or denied above are hereby denied.

V. PRAYER FOR RELIEF

Paragraphs 1 to 8 of section five of the Complaint entitled "PRAYER FOR RELIEF" are prayers for relief, and as such, do not require a response. NWA denies that Plaintiff is entitled to any relief whatsoever.

VI. AFFIRMATIVE DEFENSES

1. Some or all of the claims made in the Complaint may be barred by the applicable statute of limitations, doctrine of laches, or for failure to satisfy conditions precedent.

2. Some or all of the claims made in the Complaint may be barred by the doctrine of Estoppel.

3. Some or all of the Complaint fails to state a claim upon which relief may be granted.

4. Some or all of the claims made in the Complaint may be barred by the doctrines of avoidance of the consequences, fair use, nominative fair use, or the failure to mitigate damages.

5. Plaintiff's alleged injuries and damages may have been the proximate result of independent, intervening and superseding causes for which NWHHA is not liable.

WHEREFORE, having fully answered, NWHHA respectfully requests that:

- (a) Judgment be entered in favor of NWHHA and against Plaintiff on all claims;
- (b) That all costs of this action be charged to Plaintiff; and
- (c) That NWHHA be granted such other and further relief to which it may be entitled, including but not limited to attorney fees.

Respectfully submitted,

JACK, LYON & JONES, P.A.

By: /s/ Bruce H. Phillips
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Certificate of Service

I, Bruce H. Phillips, hereby certify the foregoing Answer was filed through the Electronic Filing System in accord with Rule 29 of the United States District Court Local Rules of Court for the Middle District of Tennessee, for service upon Stephen J. Zralek, 511 Union Street, Suite 1600, Nashville, Tennessee 37219 to on this the 13h day of January, 2006.

/s/ Bruce H. Phillips
Bruce H. Phillips